

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Appeal of the Board of Adjustment decision to deny (1) a minimum lot size variance from 11,700 square feet to 7,020 square feet and (2) a variance to the minimum lot width at the building line from 90 feet to 65 feet for a proposed home in R-1AA (Single Family Dwelling District); (Nora Martinez, applicant/appellant).

DEPARTMENT: Planning and Development **DIVISION:** Planning

AUTHORIZED BY: Dori DeBord

CONTACT: Kathy Fall

EXT: 7389

MOTION/RECOMMENDATION:

1. UPHOLD the Board of Adjustment decision to deny (1) a minimum lot size variance from 11,700 square feet to 7,020 square feet and (2) a variance to the minimum lot width at the building line from 90 feet to 65 feet for a proposed home in R-1AA (Single Family Dwelling District); or
2. REVERSE the Board of Adjustment decision to deny (1) a minimum lot size variance from 11,700 square feet to 7,020 square feet and (2) a variance to the minimum lot width at the building line from 90 feet to 65 feet for a proposed home in R-1AA (Single Family Dwelling District); or
3. CONTINUE the request to a time and date certain.

District 4 Carlton D. Henley

Kathy Fall

BACKGROUND:

The applicant/appellant requested (1) a minimum lot size variance from 11,700 square feet to 7,020 square feet and (2) a variance to the minimum lot width at the building line from 90 feet to 65 feet in order to construct a single family home. At the June 25, 2007 regular hearing, the Board of Adjustment denied the variances and the applicant appealed the decision on July 9, 2007.

STAFF FINDINGS:

The applicant has not satisfied the criteria for the grant of a variance. Staff has determined that:

- a. There are no special conditions or circumstances which are peculiar to the subject property. The current zoning regulations in R-1AA were in effect in 1971, at which time the subject lots (8 and 9) were combined in order to meet minimum requirements for lot size and lot width in R-1AA zoning so that a house on Lot 8 could be legally constructed. Prior to separation, Lots 8 and 9 met the minimum lot size requirement of 11,700 square feet and lot width requirement of 90 feet in R-1AA zoning for a single building site. Separation of the two lots by the applicant has created two nonconforming lots, which require, but are not entitled to, granting of variances; and

b. Separating Lots 8 and 9, and thereby creating two (2) nonconforming lots, was a deliberate action by the applicant resulting in a self-created hardship; and

c. Granting the requested variances will confer on the applicant special privileges that are denied by Chapter 30 to other land owners in the same zoning classification as other applicants have been denied similar variances. The average lot size and lot width on the east side of Virginia Avenue is 11,363 square feet and 104 feet, respectively. Most lots along this portion of Virginia Avenue have been combined since platting and meet current R-1AA zoning regulations for lot size and lot width.

d. Literal interpretation of the provisions of Chapter 30 would not deprive the appellant of rights commonly enjoyed by other properties in the same zoning classification and would not create unnecessary and undue hardship for the applicant, as Lot 8 & 9 , when combined, were consistent with the development trend of Virginia Avenue; and

e. Granting the requested variances is unnecessary as the combined lots met the minimum lot size and lot width requirements for R-1AA zoning for a single building site prior to separation by the applicant; and

f. Granting the variances would not be in harmony with the general intent and purpose of Chapter 30 because granting the requested variances would be inconsistent with adjacent development, and other properties zoned R-1AA.

STAFF RECOMMENDATION:

Staff recommends the Board of County Commissioners uphold the decision of the Board of Adjustment to deny a (1) minimum lot size variance from 11,700 square feet to 7,020 square feet and a (2) variance to the minimum lot width at the building line variance from 90 feet to 65 feet for a proposed home in R-1AA (Single Family Dwelling District); (Nora Martinez, applicant/appellant).

ATTACHMENTS:

1. Notice of Appeal to BCC
2. New Site Plan
3. Location Map
4. Aerial
5. Property Appraiser Data
6. Fact Findings
7. BOA Meeting Minutes

<u>Additionally Reviewed By:</u>
<input checked="" type="checkbox"/> County Attorney Review (Kimberly Romano)

July 9, 2007

RECEIVED JUL 09 2007

Seminole County
Planning and Development Department
Board of County Commissioners
1101 East First Street
Sanford, FL 32771-1468

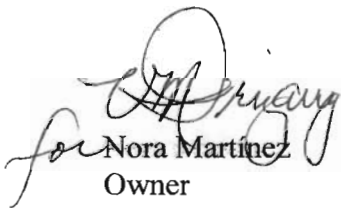
Re: Appeal, BV2007-43, Variance Request for Parcel #01-21-29-5CK-0A00-0090,

Nora N. Martínez, the Appellant, is hereby appealing the decision of the Board of Adjustment in regard to the reference Variance, communicated in a letter written and signed on July 3, 2007, although the letter is dated June 26, 2007. As of July 3, 2007, the Seminole County Denial Development Order had not been issued; however, the Planning Division provided an unsigned draft of the proposed order to the Appellant.

The attached narrative provides the bases for the appeal, discussing the errors incurred by the Board both in findings of facts and in conclusions of law.

For clarifications or additional information on this matter, you can contact Mr. Víctor M. Irizarry, please see enclosed letter authorizing Mr. Irizarry to act on my behalf in the process of this appeal. Mr. Irizarry can be reached at (407) 937-9463, or (407) 830-8208, or virizarry6@cfl.rr.com.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nora Martínez", is written over a printed name. The signature is fluid and cursive.

Nora Martínez
Owner
222 Windmeadows St.
Altamonte Springs, FL 32701

Altamonte Springs, FL
June 27, 2007

Re: BV2007 - Virginia Avenue (1135), Lot 9, Nora Martínez (Applicant)

To whom it may concern:

The undersigned hereby authorizes Mr. Víctor M. Irizarry to represent me at and file on my behalf an appeal to the June 25, 2007 decision of the Board of Adjustment denying the subject request for variance and to request and collect from the Seminole County Offices any and all the information that may be necessary for such purpose.

Property: 1133 Virginia Avenue, Altamonte Springs, FL 32701.
Parcel: 01-21-29-5CK-0A00-0090

Sincerely,

A handwritten signature in dark ink, appearing to read 'Nora N. Martínez', is written over a light blue rectangular background.

Nora N. Martínez
222 Windmeadows St.
Altamonte Springs, FL 32701
(407) 937-9463

Discussion of Errors in Findings of Facts and Legal Matters in Support of the Appeal Against the Decision of the Seminole County Board of Adjustment; Case BV2007-43, Variance Request for Parcel #01-21-29-5CK-0A00-0090:

1. The Board of Adjustment (the Board) erred in denying the Applicant Nora Martínez the same type of variance and the same opportunity to enjoy property owner's rights granted to other citizens in the same neighborhood, thus denying the constitutional right to equal protection of the laws.

The Board has approved variances on width and total area of lots, even smaller lots than Applicant's lot and houses are built in nonconforming lots of equal front width and of smaller areas than the zoning regulations require; along the same sidewalk and at a couple of blocks away from the Applicants lot. When the same regulations are interpreted to grant certain citizens a specific right, but denying the same right to another citizen, we have to question and challenge the constitutional validity of the decision and of the applicable regulations. When decisions of a public office are based on imaginary facts and on twisted facts or wrong assumptions to discriminate against a citizen, denying to that citizen the equal protection of the laws, that decision is arbitrary and we have to question and challenge the constitutional validity of such decision.

The Appellant will not back-off, but will continue pursuing that justice be done through all the forums as may become necessary.

2. The Board of Adjustment erred in concluding that the subject variance is not in conformance with Future Land Use Element Policy 3.2 of the Vision 2020 Plan; consequently resting the decision on an imaginary combining of lots that was never required.

Policy FLU 3.2 related to Antiquated Plats reads as follows in the pertinent portions: "The County shall continue to resolve **land use compatibility, environmental, and infrastructure issues** related to antiquated plats by way of, but not limited to, the following techniques. *(Emphasis supplied)* A. Requiring the combining of lots...."

Primarily, the proposed use for Lot 9 is fully compatible with the surrounding ; it will be dedicated for a single family residence, the use for which it was designed, platted, and approved by the County in 1954 as one of 118 residential lots within the Replat of Tract 57. All design characteristics of the lot complied with the standards set in the Altamonte Springs Code; namely lot size, width, shape, orientation, and room for building setback lines, making it satisfactory and desirable for residential use; that is why it was approved by this County in 1954. The County is at present approving building houses in considerably narrower and smaller residential lots all over its jurisdiction. Second, there is no environmental issue with the proposed development of the lot. And third, there is no infrastructure issue with the proposed development of the lot.

Since the criteria to be met under Policy FLU 3.2 for the County to resolve with

Continuation: Discussion of Errors in Findings of Facts and Legal Matters in Support of the Appeal Against the Decision of the Seminole County Board of Adjustment; Case BV2007-43, Variance Request for Parcel #01-21-29-5CK-0A00-0090:

combining of lots (whatever that means) was never met, and after the fact application of this disposition is wrong and out of time. The County is applying dispositions of a 2001 document to actions taken between 36 to 40 years ago.

3. The Board's decision does not reconcile with two dispositions of the Vision 2020 Comprehensive Plan; making one disposition inconsistent in front of the other.

The Issue FLU 3 of the Vision 2020 Comprehensive Plan states as follows in the pertinent portion (Second Paragraph): "Based on the currently adopted Exhibit FLU: *Future Land Use Map*, it is projected that between 2015 and 2020 the County will experience a shortage of vacant developable land for single family and multi-family development. Among the options available to address this shortage includes amending the plan to allow increased densities within existing residential designation and creating infill parcels where a mix of residential and non-residential uses would be allowed."

Appellant's parcel of land is one of the few remaining lots in the neighborhood that is absolutely satisfactory for a residence, it is developable, meeting the criteria in Issue FLU 3 cited above. Why didn't the Board use this section of the Vision 2020 Comprehensive Plan to justify granting the Variance requested? Instead of going along with the spirit of the Plan the Board elected to deny the requested variance by creating an imaginary action of combining lots that never took place, changing some facts, and forcing it inside Policy FLU 3.2. If the Board had decided to grant the Variance, the action would reconcile with both legal dispositions.

4. The Board based its decision on imaginary facts, on inaccurate facts, and on mere speculations.

It is already stated that the Board concluded that Applicant's lot had been combined with Lot 8, but there is no evidence to support such determination. The County has not provided any evidence to show that combining lots was done: like any agreement to combine or join lots, a new survey showing a different lot description, a different deed converting two lots in one parcel, proper recording of new parcel, etc. On the contrary, the previous owner and the Appellant maintained Lot 9 as a separate lot, separately recorded with a unique legal description, and paying taxes separately on the lot. In addition, the Appellant never requested Homestead Exemption on Lot 9, but received the exemption exclusively for the house and Lot 8 before it was sold.

The inaccurate or twisted fact or assumption was brought to the table by a Board member just before presenting the motion to deny the request for variance. He expressed that if the variance was approved, the houses would be five feet from each other

Continuation: Discussion of Errors in Findings of Facts and Legal Matters in Support of the Appeal Against the Decision of the Seminole County Board of Adjustment; Case BV2007-43, Variance Request for Parcel #01-21-29-5CK-0A00-0090:

and that this setting would disrupt the harmony of the neighborhood or that it would be detrimental to the character of the area where the houses are more distant apart; immediately he presented the motion to deny the request and he was followed by other Board members. The statement of the Board is far from the truth, the Appellant had filed a letter expressing that within the 65 feet wide lot a house can be built maintaining or even exceeding the established setbacks (a design is being considered that will maintain 11 ft. setbacks which means that the closest house would be at 21 lineal feet). It appears that Appellant's letter was not given due consideration.

The speculative findings consist in that the Board apparently placed significant weight on neighbors expressions concerning the value of their properties. There is no evidence, and there can't be any evidence presented to prove that a well built home in Lot 9 will adversely affect the value of adjacent and/or surrounding properties; this is mere speculation. On the contrary, a house of higher value than the houses on each side and across from Lot 9 may be built on Appellant's lot adding value to the neighborhood.

Imaginary facts, wrong unfounded assumptions, and mere speculations shall not be given weight or the power to override the right to equal protection of the laws, not in our constitutional and juridical frames.

5. The Board erred in concluding that the Appellant had violated Sec. 30.26 (d) of the Zoning Regulations.

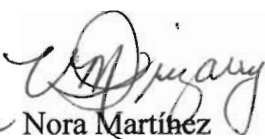
Since no one Lot Area or yard in this case has been reduced, the conclusion is wrong.

6. The effect of the County's actions is equivalent to a condemnation of the property without payment.

It has been the County's actions who have caused the hardship on the Appellant an on the property.

In view of the above, the Appellant respectfully requests the Board to reverse its decision, and that the Variance requested be approved.

Submitted by,

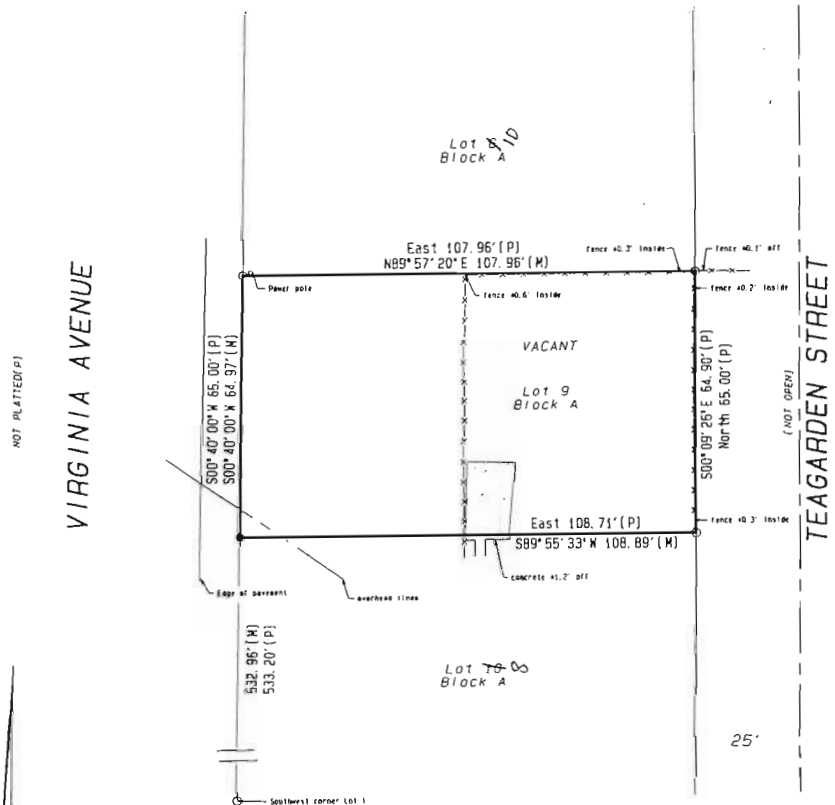

for Nora Martinez
Appellant

Date: July 9, 2007

Boundary Survey for Nora Martinez

EXHIBIT-I

Lot 9, Block A,
SANLANDO SPRINGS REPLAT OF TRACT 57
Plat Book 9, Page 49,
Seminole County, Florida



Not valid without the signature and the original
revised seal of a Florida licensed surveyor.
Addition, and corrections to survey maps,
parties or reports by other than the original
party or parties is prohibited without written
consent of the original party or parties.

Michael A. Soltes, PLS #1000
for the Firm of Altamonte Surveying
and Platting, Inc. #18000

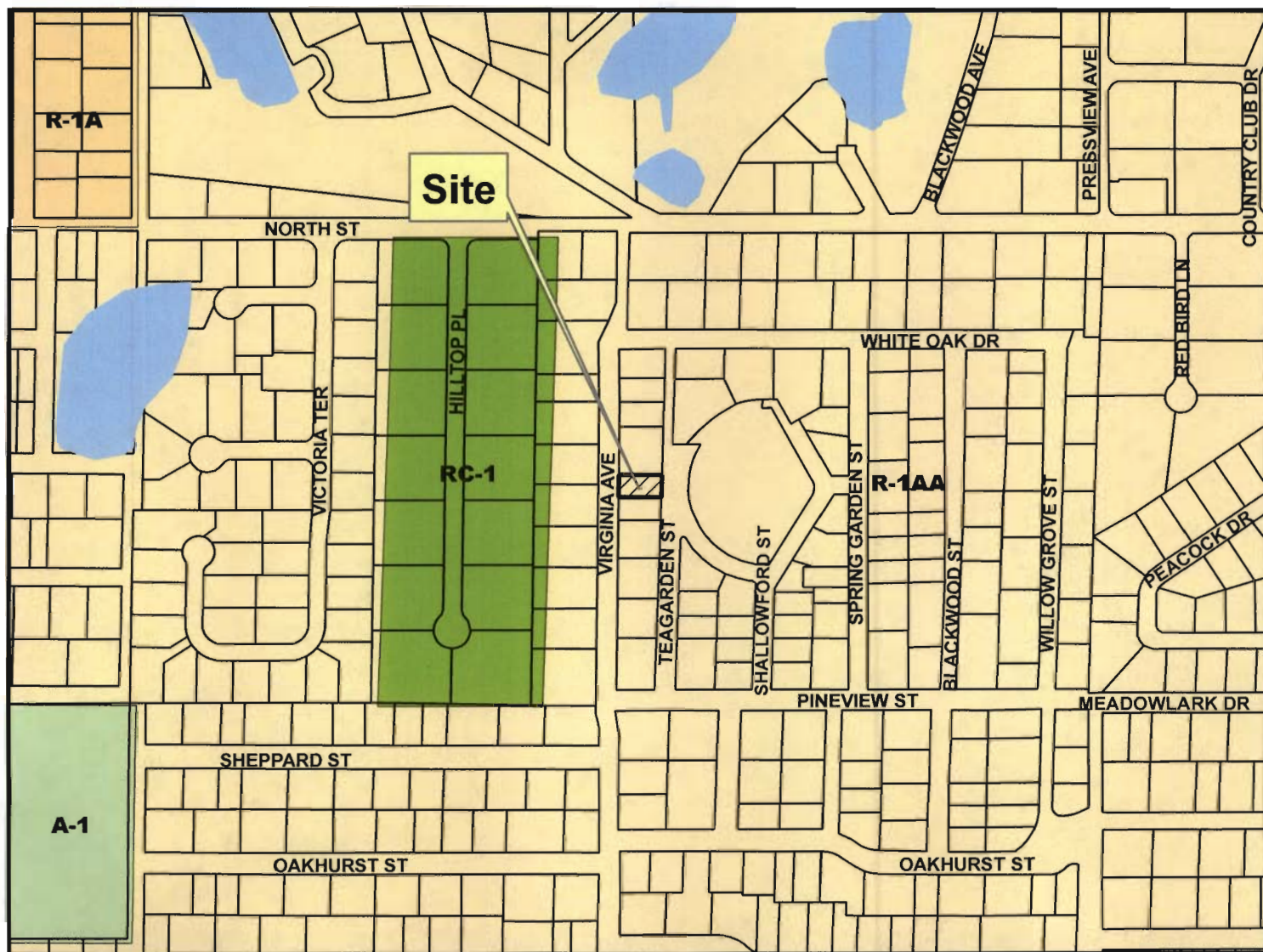
ALTAMONTE SURVEYING AND PLATTING, INC.

Phone (407) 862-7555

445 Douglas Avenue, Suite 1505
Altamonte Springs, Florida 32714





Fax (407) 862-6229

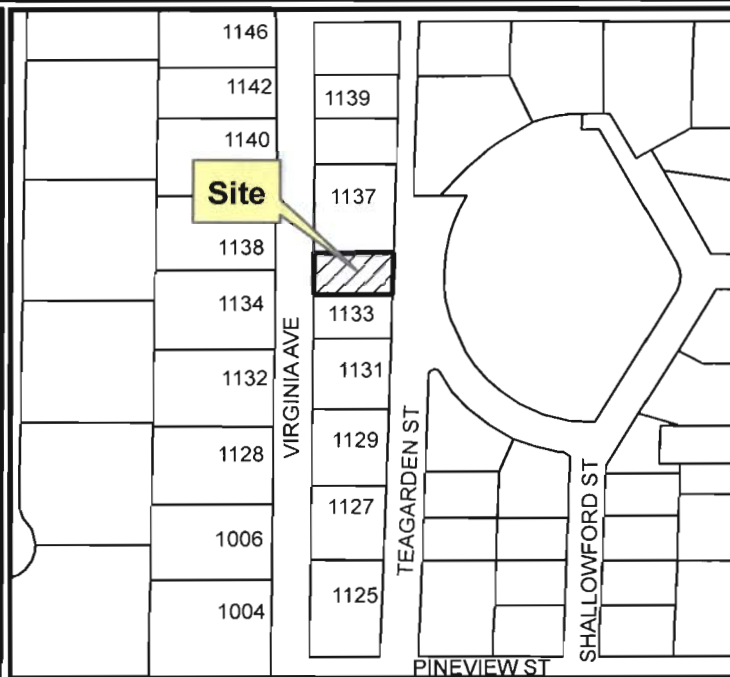
Nora Martinez
Lot 9, Blk A, Sanlando Springs
Replat of Tract 57
1135 Virginia Avenue
Altamonte Springs, Florida 32701



Seminole County Board of County Commissioners
August 28, 2007
Case: BV2007-43
Parcel No: 01-21-29-5CK-0A00-0090

Zoning

-  BV2007-43
-  A-1
-  RC-1
-  R-1AA
-  R-1A



Aerial View



PARCEL DETAILS DAVID JOHNSON, CFA, ASA PROPERTY APPRAISER SEMINOLE COUNTY FL 1101 E. FIRST ST SANFORD, FL 32771-1468 407-665-7506																								
GENERAL Parcel Id: 01-21-29-5CK-0A00-0090 Owner: MARTINEZ NORA Mailing Address: 222 WINDMEADOWS City, State, Zip Code: ALTAMONTE SPRINGS FL 32701 Property Address: 1135 VIRGINIA AVE Subdivision Name: SANLANDO SPRINGS Tax District: 01-COUNTY-TX DIST 1 Exemptions: Dor: 00-VACANT RESIDENTIAL		2007 WORKING VALUE SUMMARY Value Method: Market Number of Buildings: 0 Depreciated Bldg Value: \$0 Depreciated EXFT Value: \$0 Land Value (Market): \$23,758 Land Value Ag: \$0 Just/Market Value: \$23,758 Assessed Value (SOH): \$23,758 Exempt Value: \$0 Taxable Value: \$23,758 Tax Estimator																						
SALES <table border="1"> <thead> <tr> <th>Deed</th> <th>Date</th> <th>Book</th> <th>Page</th> <th>Amount</th> <th>Vac/Imp</th> <th>Qualified</th> </tr> </thead> <tbody> <tr> <td>WARRANTY DEED</td> <td>09/1987</td> <td>01893</td> <td>0601</td> <td>\$90,000</td> <td>Vacant</td> <td>No</td> </tr> <tr> <td>QUIT CLAIM DEED</td> <td>03/1979</td> <td>01212</td> <td>0353</td> <td>\$100</td> <td>Vacant</td> <td>No</td> </tr> </tbody> </table> Find Comparable Sales within this Subdivision		Deed	Date	Book	Page	Amount	Vac/Imp	Qualified	WARRANTY DEED	09/1987	01893	0601	\$90,000	Vacant	No	QUIT CLAIM DEED	03/1979	01212	0353	\$100	Vacant	No	2006 VALUE SUMMARY 2006 Tax Bill Amount: \$383 2006 Taxable Value: \$23,758 DOES NOT INCLUDE NON-AD VALOREM ASSESSMENTS	
Deed	Date	Book	Page	Amount	Vac/Imp	Qualified																		
WARRANTY DEED	09/1987	01893	0601	\$90,000	Vacant	No																		
QUIT CLAIM DEED	03/1979	01212	0353	\$100	Vacant	No																		
LAND <table border="1"> <thead> <tr> <th>Land Assess Method</th> <th>Frontage</th> <th>Depth</th> <th>Land Units</th> <th>Unit Price</th> <th>Land Value</th> </tr> </thead> <tbody> <tr> <td>FRONT FOOT & DEPTH</td> <td>65</td> <td>108</td> <td>.000</td> <td>425.00</td> <td>\$23,758</td> </tr> </tbody> </table>		Land Assess Method	Frontage	Depth	Land Units	Unit Price	Land Value	FRONT FOOT & DEPTH	65	108	.000	425.00	\$23,758	LEGAL DESCRIPTION PLATS: <input type="text" value="Pick..."/> LEG LOT 9 BLK A SANLANDO SPRINGS REPLAT OF TRACT 57 PB 9 PG 49										
Land Assess Method	Frontage	Depth	Land Units	Unit Price	Land Value																			
FRONT FOOT & DEPTH	65	108	.000	425.00	\$23,758																			
NOTE: Assessed values shown are NOT certified values and therefore are subject to change before being finalized for ad valorem tax purposes. *** If you recently purchased a homesteaded property your next year's property tax will be based on Just/Market value.																								

PLANNING AND DEVELOPMENT



DATE: December 5, 2006
TO: April Boswell
Cc: Gretchen Venn
FROM: Denny Gibbs
RE: Santiago Property 1133 Virginia Ave

This memo is in response to Mr. Santiago's November 7, 2006 letter sent to Commissioner Henley which questions the non-conforming situation relative to his lot.

Mr. Santiago resides at 1133 Virginia Avenue (Lot 8) and purchased this property from Nora Martinez. Ms. Martinez also owns the adjacent vacant Lot 9. In 2002, Ms. Martinez applied for a variance for lot area and lot width for Lot 9 in order to render this lot buildable. This was denied by the BOA and appealed and upheld by the BCC. Mr. Santiago's lot (Lot 8) is also non-conforming as to lot size and width although according to the Property Appraiser a house was built on this property in 1971. Evidence put forth at the appeal shows that a foundation survey on Lot 8 was certified 9/22/71. A Mr. Avent purchased Lot 8 on 12/29/71 from Mr. Gamble. In February of 1972, Mr. Avent then purchased the vacant Lot 9 from a Mr. Hiers. It cannot be verified if any permits were issued for the foundation on Lot 8 and I have searched the BOA minutes for 1970, 1971 and 1972 and have not found where a variance was granted for the non-conforming lot so the assumption must be that they did not have a permit for the foundation. At the time of this construction the required lot size for R1AA was 10,000 square feet and 85 feet at the building line. Lot 8 on its own was non-conforming. When the variance and appeal were presented, the County asserted that Mr. Avent purchase Lot 9 in order to make the lot conforming and secure the building permit necessary for the completion of the structure.

In his letter Mr. Santiago asks "...maybe there is something hidden somewhere that could make the seller and owner of the vacant lot to give me the required amount of property that could bring my lot to the conforming status required." In order to make Mr. Santiago's lot conforming he would have to obtain Lot 9 in its entirety. A portion of this lot could not be transferred as this would leave a remnant lot that would be more non-conforming which the Land Development Code prohibits. Another solution would be to secure a legal non-conforming status via a variance for Lot 8 although given the history with the variance request for Lot 9, the success of such would be doubtful unless the applicant came forward with some new information to support this. Unfortunately, I think the solution is ultimately a civil matter between the buyer and seller.

If you would like me to write Mr. Santiago relaying the above information, I would be happy to do so.

MINUTES FOR THE SEMINOLE COUNTY BOARD OF ADJUSTMENT JUNE 25, 2007 MEETING 6:00 P.M.

Members Present: Mike Hattaway, Chairman; Wes Pennington, Alan Rozon, Tom O' Daniel and Dan Bushrui

Staff Present: Kathy Fall, Principal Planner; Denny Gibbs, Senior Planner; Joy Williams, Planner; Kimberly Romano, Assistant County Attorney

Mr. Hattaway, Chairman; called the meeting to order at 6:00 P.M. Mr. Hattaway then explained the method by which the meeting would be conducted, rules for voting and appealing decisions.

Virginia Avenue (Lot 9) – Nora Martinez, applicant; Request for a (1) minimum lot size variance from 11,700 square feet to 7,020 square feet and a (2) width at the building line variance from 90 feet to 65 feet for a proposed home in R-1AA (Single Family Dwelling District); Located on the east side of Virginia Avenue approximately 560 feet north of Pineview Avenue; (BV2007-43).

Kathy Fall introduced the location of the property and stated that in 1987, the applicant purchased Lots 8 and 9 of Block A. She further stated that in 2000 the applicant sold Lot 8 to the current owner Mr. Jose Santiago. She then stated that in the Board Member's packet was a letter requesting a continuance from Mr. Santiago, because he was out of town. She also stated that in his letter Mr. Santiago stated that he was the most effected by the applicant's request. She further stated that both lots are non-com-forming. She then stated than in 2002 the applicant asked for the same variances and was denied by the Board of Adjustment and the Board of County Commissioners. She lastly stated that the applicant was requesting the variances to build a house on the lot.

Norma Martinez stated that her friend from church, Mr. Victor Irizarry would speak for her if the Board didn't mind.

Victor Irizarry stated that Mrs. Martinez asked him to present her case. He further stated that he went though all the past records from 2002 and that the reason she was denied her request, was that it was determined that she created a hardship. He then stated that she never legally separated the two lots, when she purchased the two properties they had two legal

descriptions and she paid separate taxes for the two different lots since 1987; always with the intention of building a second house. He also stated that she didn't know that with both lots being separate would make them substandard lots. He further stated that granting the variances requested would not confer on the applicant any special privileges because similar variances had been approved in the past few years in the same area; for instance on November 7, 2005 on Alpine Street and Virginia Ave a variance for a minimum lot size variance from 11,700 square feet to 6,615 square feet, which was even smaller than the applicants lot, and December 19, 2005 another variance was approved from 11,700 square feet to 7,130 square feet and several other request that were taken as Consent Items were approved. He then stated that Mrs. Martinez was requesting the variances because they were the minimum variances that would allow her reasonable use of the property. He also stated that they had talked to several developers that had built houses on smaller lots and they said they could put a beautiful home on her lot. He further stated that if Mrs. Martinez was allowed to build a house it would be 300,000.00 in value and it would meet all the setback requirements. He then stated that it was the change in the regulations that imposed the burden on the property not Mrs. Martinez. He lastly asked the Board of Adjustment to give Mrs. Martinez the opportunity to build a house on her lot.

Bernard Huguenot stated that he lived directly across the street from the property in question and that they already had one non-conforming lot and if the request was approved they would have two non-conforming lots in the neighborhood. He further stated that most of the lots on the same side of the street are double lots. He then stated that the request had been denied twice in the past. He lastly stated that when Mrs. Martinez sold Mr. Santiago his lot, she created a hardship for herself and Mr. Santiago.

Nancy Brown stated that from everything she heard in the past and at the meeting Mrs. Martinez created a substandard lot and now she is looking to capitalize on something that has caused a hardship for Mr. Santiago. She further stated that they did not need another smaller lot approved in this area.

David Bonaskiewich stated that he lived directly next door to the lot in question and that another non-conforming lot would not be a good thing. He further stated that his house is on two lots and it sits in the center of the two lots, which has a frontage of 130 feet, and the applicant was requesting 65 feet frontage and that house would be in contrast with the rest of the houses.

Victor Irizarry stated that the fact that there are larger lots does not mean that building a house on that smaller lot would cause any harm; it would improve the neighborhood. He further stated that there had been very similar variances that had been approved on smaller lots. He lastly stated that if the request was denied, Mrs. Martinez would be denied a privilege or a right that was given to others.

Mr. O' Daniel made a motion to deny the request.

Mr. Pennington seconded the motion.

The motion passed by unanimous consent (5-0)